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Issues in the Legal Theory of *Uṣūl* and Prospects for Reform*

MOHAMMAD HASHIM KAMALI

Introduction

The basic question that I raise in this presentation is whether the methodology of legal reasoning provided by the *uṣūl al-fiqh* has lost its capacity to stimulate originality in legal thought whereby it is also failing to encourage *ijtihād*. As a field of Islamic learning, *uṣūl al-fiqh* provides a set of guidelines for *ijtihād*, with the purpose mainly to encourage *ijtihād* and make it a reality of law and government in Muslim societies. The question that now concerns us is whether the *uṣūl al-fiqh* is actually serving that purpose.

I begin by introducing the *uṣūl al-fiqh* and briefly reviewing the historical setting in which it was developed. I ask the question, for example, as to what prompted Muḥammad ibn Idrīs al-Shāfi'ī (d. 204/819) to articulate the theory of *uṣūl* in the way he did. This will be followed by a brief discussion of the doctrines of *qiyās*, *ijmā'* and *iṭtihād* and observations as to why the methodology and resources that they offer are not functioning under the prevailing conditions of modern government.

The second part of my essay addresses the *maqāṣid al-sharī'ah* (goals and purposes of the *sharī'ah*) as an aspect of the legal theory of *uṣūl* which has, however, been persistently neglected. The discussion proceeds to explore the prospects of integration between the *uṣūl* and the *maqāṣid*, and then puts forward proposals which seek to reform the legal theory and make it relevant to the contemporary processes of statutory legislation. One hardly needs to emphasise that Islam is very much *Sharī'ah*–centred and hence rigidity in the legal theory will have unwholesome consequences for the future of Islam.

* This is the inaugural lecture delivered by the author. It marked the start of the International Islamic University Malaysia's Professorial Lecture Series. It was delivered at the Banquet Hall, Gombak Campus, 13 June 2000.

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Definition and History of *Uṣūl*

Uṣūl al-fiqh (literally, roots of Islamic law) is the science of the sources of the *Sharī'ah* which was developed with the purpose of providing a set of guidelines by which to regulate *ijtihād*. *Ijtihād* basically aims at finding feasible solutions to new issues which have not been specifically addressed by the existing law. To regulate this exercise, the legal theory of *uṣūl* proposes a methodology by which legal rules can be deduced from the source materials of the *Sharī'ah*. *Uṣūl al-fiqh* identifies these sources and ascertains an order of priority between them. It also expounds the rules of interpretation which ensure correct understanding of the textual evidence.

The sources of the *Sharī'ah* that are so identified are of two types: revealed and non-revealed. The revealed sources, namely the Qur'ān and the *Sunnah*, contain both specific injunctions and general guidelines on law and religion, but it is the broad and general directives that occupy the larger part of the laws of the Qur'ān and the *Sunnah*. The revealed sources contain little by way of methodology of legal reasoning but they are rich in substantive principles and guidelines that can be used as raw materials for *ijtihād*. The non-revealed sources of the *Sharī'ah* consist of a number of rational doctrines which provide, each in its own capacity, a different formula and procedure for *ijtihād*. The non-revealed sources thus consist of a variety of doctrines ranging from analogical reasoning (*qiyās*), considerations of public interest (*istiṣlāḥ*), juristic preference (*istiḥsān*), presumption of continuity (*istiṣḥāb*), and so forth. Whereas the clear injunctions of the Qur'ān and the *Sunnah* command permanent validity, the methodology of *uṣūl* and its non-revealed sources do not, for they are mainly the product of juristic thought and are valid for as long as they serve their desired purpose and may be changed when they cease to be functional.

Uṣūl al-fiqh did not develop during the time of the Prophet (peace be on him) nor of the Rightly-Guided caliphs for during this period there was no pressing need for it. The historical origins of *uṣūl al-fiqh* are usually traced back to the writings of Shāfi'ī, who is regarded as the chief architect of this discipline. His renowned work, *al-Risālah*, was the first work of authority to articulate the broad outline of this discipline. Shāfi'ī lived at a time when the controversy between the partisans of *ra'y* and the partisans of *ḥadīth* (*ahl al-ra'y* and *ahl al-ḥadīth*) had reached a critical stage, so much so that the ardent advocates of each spoke disparagingly of the other. During the latter part of the first and larger part of the second century *Hijrah*, recourse to stray opinion and undisciplined *ra'y* by unqualified individuals in the guise of *ijtihād* was perceived to be a threat to the integrity of the *Sharī'ah* and a cause, therefore, of concern for the *'ulamā'*. Shāfi'ī was acutely aware of the need to stem the

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tide of unregulated *ra'y* and *ijtihād* by means of methodological guidelines designed to ensure their conformity with the letter and spirit of the *nuṣūṣ*. Two of Shāfi'ī's distinguished predecessors, Abū Ḥanīfah (d. 150/767) and Mālik (d. 179/795) were associated respectively with the *ahl al-ra'y* and *ahl al-ḥadīth*. The Ḥanafī doctrines of *qiyās* and *istiḥsān* came under criticism by the *ahl al-ḥadīth* who maintained that all issues must be referred to the *nuṣūṣ* and extrapolations in *ra'y* in the name of *qiyās* and *istiḥsān* were to be avoided.

Shāfi'ī took an intermediate position between the two schools of thought and he is widely acclaimed to have merged the Ḥanafī and the Mālikī trends in the methodology that he articulated. His intermediate but basically fragmented approach can be seen perhaps in the fact that he supported *qiyās* but rejected *istiḥsān*. Juristic preference or *istiḥsān* is grounded in the idea that applying the existing law can sometimes lead to rigidity or inequitable results. When that happens, the jurist must resort to *ijtihād* and find an alternative and a preferable solution to the issue at hand. *Qiyās*, which was controversial to begin with, due to the rationalist leanings implicit in the idea of determining the effective cause (*'illah*) of legal injuctions, was eventually accepted but *istiḥsān* remained controversial. Shāfi'ī wrote that in his search for solution to issues, the jurist and *mujtahid* must first look up to the Qur'ān and the *Sunnah*, and only then resort to *qiyās*, which extends the rationale and purpose of the legal injunctions of the Qur'ān and the *Sunnah* to similar cases. By doing so, the *mujtahid* would have fulfilled his duty and complied with the Qur'ānic directives embodied in 4: 59; 75: 36. Shāfi'ī went on to equate juristic preference or *istiḥsān* with *taladhdhudh wa hawā*, that is, a totally self-opinionated and capricious indulgence in personal opinion.[1]

Shāfi'ī's enthusiasm for *qiyās* can clearly be seen in one of his widely-quoted remarks in *al-Risālah* where he wrote that *qiyās* and *ijtihād* were two words for the same meaning and that "*ijtihād* is *qiyās* and *qiyās* is *ijtihād*".[2] What he was saying, of course, was that *qiyās* was the only correct avenue for *ijtihād*, and that no other variety of *ijtihād* outside the framework of *qiyās* was of any merit.

Without wishing to engage in technicalities, Shāfi'ī's position on both *qiyās* and *istiḥsān* seems to be somewhat lopsided and out of tune with his purpose to strike a balance between the Traditionalists and Rationalists. *Ijtihād* is obviously a wider concept than *qiyās*, and *istiḥsān* did not call for the sort of rejection that it invoked from Shāfi'ī.

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[1] Muḥammad b. Idrīs al-Shāfi'ī, *al-Risālah*, ed., Muḥammad Sayyid Kīlānī, 2nd edn. (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1403/1983), 205–206; idem, *Kitāb al-Umm* (Cairo: Dār al-Sha'b, 1321 AH), 7: 271.

[2] Maḥmūd Shaltūt, *al-Islām: 'Aqīdah wa Sharī'ah* (Kuwait: Dār al-Qalam, 1966), 558–59.

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The Ḥanafīs who advocated *istiḥsān* saw it as an antidote of *qiyās* which was meant to moderate its possible rigidities. To accept the one and reject the other was, therefore, lopsided. *Istiḥsān* advocated recourse to the basic rules of equity and fairness in cases where strict adherence to *qiyās* led to unfair results. To illustrate the place of *istiḥsān* in the overall scheme of the legal theory, we may refer to an early case of inheritance known as *al-mushtarakah*: A woman died during the time of the Caliph 'Umar b. al-Khaṭṭāb, leaving behind two uterine, and two germane, brothers, and her mother and husband. Under the normal rules of inheritance, the husband took a half of the inheritance, the mother a sixth, and the two half brothers one-third, and nothing was left for the full brothers. The full brothers were excluded as they were in the class of *'aṣabah* who took a share only after the Qur'ānic sharers (*dhawū 'l-furūḍ*) had taken theirs. The full brothers complained to the Caliph who then decided, by way of juristic preference, that all the brothers should equally share the one-third between them.

This was a typical case of *istiḥsān* whereby the Caliph devised a preferred solution that was based on his considered opinion, and it was eminently equitable.[3] If such is the purpose of *istiḥsān*, a formula by which an equitable solution could be provided to a difficult case, then *istiḥsān* did not call for rejection at all. *Istiḥsān* was indeed necessary to moderate the literalism of *qiyās*.[4] Shāfi'ī's rejection of *istiḥsān* was prompted perhaps by the then prevailing circumstances and his concern to curb arbitrary expatiation in *ra'y*. Imbalances were clearly noted in the bitter exchanges of the advocates of *ra'y* and *ḥadīth*, and also perhaps in the response that they evoked from Shāfi'ī. One can already perceive, in the forceful response that Shāfi'ī gave to the advocates of *ra'y* — although it was well-received at the time — the seeds of what became the bane of Islamic scholarship for centuries to come: Indiscriminate imitation, or *taqlīd*, found its genesis in Shāfi'ī's restrictive view of *ijtihād* and *ra'y* and his total rejection of *istiḥsān*.

The *uṣūl* methodology that Shāfi'ī articulated was evidently influenced by his concern to subordinate *ra'y* to the authority of the text through the modality of *qiyās*. This literalist tendency of the *uṣūl* theory was compounded by subsequent developments, which added technicality to literalism. Shāfi'ī's perception of *qiyās*, one might say, was relatively free of the detailed conditions and procedures that were subsequently added to it. Each of the four pillars of *qiyās* was consequently subjected to a number of conditions that

[3] Ibn Rushd al-Qurṭubī, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1401/1981), 2: 290.

[4] For a detailed presentation of the methodology, strengths and weaknesses of *istiḥsān*, see M. H. Kamali, *Istiḥsān (Juristic Preference) and Its Application to Contemporary Issues* (Jeddah: Islamic Research and Training Institute, 1997).

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were designed to ensure accuracy in its outcome. With reference to one of these, namely the effective cause (*'illah*), the *uṣūl* writers have proposed over twenty conditions that were to be met. But as noted by Muḥammad ibn 'Alī al-Shawkānī (d. 1255/1839) most of them were unnecessary and overlapping.[5] This would seem to beg the comment: if all of these requirements were to be met, *qiyās* itself would become redundant, and the new case for which a ruling was sought through *qiyās* would have to be a replica of the original case. Both cases would thus be covered by the ruling (*ḥukm*) of the text and there would be no need for *qiyās*. Technical accuracy and formal logic thus burdened the methodology of *uṣūl* during the subsequent periods, especially in the era of imitative scholarship and *taqlīd*.

Qiyās is also not an interminable source as it can only be constructed when there is a prototype and a ruling (*ḥukm*) available in the revealed sources. *Qiyās* might have been a rich source at the initial stages of the development of the *Sharī'ah* but its originality was gradually exhausted and textbook writers of the later periods began to cite the same examples of *qiyās* over and over again. *Qiyās* was, in other words, a limited source to begin with, and when it was subjected to technical conditions and procedures, its limitations became even more pronounced. If there was anything common between *qiyās* and *ijtihād*, it was the fact that they were both in a state of stagnation and decline.

Issues in *Ijmā'* (General Consensus)

Like *qiyās* the concept of *ijmā'* also requires consideration. Now, the problematics of *ijmā'*, especially those that relate to the requirement of universal consensus, are probably too well-known to require detailed elaboration. But before focusing on its problems, we note that the basic strength of *ijmā'* lies in its being an umbrella concept that relates to almost every aspect of the legal theory. It has equipped *uṣūl al-fiqh* with a formula whereby the rulings of *ijtihād* and its sub-varieties such as *istiḥsān* and *qiyās* could be endorsed and elevated into definitive laws of the *Sharī'ah*. *Ijmā'* is the only binding source and proof that is known to *uṣūl al-fiqh* next to the Qur'ān and the *Sunnah*, and it has played an important role in the development of *fiqh*, so much so that the existing body of *fiqh* may be said to be the product of a long process of *ijtihād* and *ijmā'*. *Ijmā'* is predicated on the natural evolution of ideas, and since it is rooted in the consensus of the community and its scholars, it is endowed with a vast potential for mobility and dynamism.

[5] Muḥammad ibn 'Ali al-Shawkānī, *Irshād al-Fuḥūl min Taḥqīq al-Ḥaqq ilā 'Ilm al-Uṣūl* (Cairo: Dār al-Fikr, n.d.), 207–208 listed 24 conditions for the *'illah* whereas the Mālikī jurist Ibn al-Ḥājib recorded only eleven.

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Without *ijmā'* almost all of the rationalist doctrines of *uṣūl al-fiqh* and *ijtihād* could lose their touch with reality and remain in the realm of perpetual speculation and debate. It would be as if one had a basic theory of enacting law without having a machinery and procedure to enact it. *Ijmā'* is also eminently democratic as it is grounded in the affirmation that the will and consensus of the community stands in authority next to the will of God Most High.

The problematics of *ijmā'* are both theoretical and practical . The theory of *ijmā'* was beset with problems from the outset and much of what is known in the name of *ijmā'* actually fails to meet the strict requirement, as stipulated in its definition, of the universal consensus of the *mujtahidūn* of the *ummah*. Since *ijmā'* was recognised as a binding proof, this high status also gave rise to the requirement that only an absolute and universal consensus of the *mujtahidūn* would qualify, although in reality this has been very difficult to obtain.

The requirement of universal consensus was evidently not observed by the definition of *ijmā'* itself, especially when one notes that it did not require any participation, let alone approval, of the government in power. The classical definition of *ijmā'* stipulated only the consensus of "the *mujtahidūn* of the Muslim community", which meant that the *mujtahidūn* could actually validate *ijmā'* and make it binding on the government without the latter's participation or approval.[6]

This rather unexpected development was a reflection of the then prevailing rift between the *'ulamā'* and government, which had begun with the fall of the *khilāfah* and the Umayyad dynasty's introduction of a monarchical system of government. The *'ulamā'* denied the Umayyad rulers, whose piety in their eyes was suspect, the right to legislate and interpret the law. The rift between the government and the *'ulamā'* became more visible under the Abbasids who denied the *'ulamā'* a share in political power.[7] Thus the struggle over legitimacy had "a serious negative influence in changing the sound psychological and rational environment" which had prevailed in earlier periods.[8] This pattern of events was also at odds with the Qur'ānic provision on obedience to the leaders, or the *ulu 'l-amr*. The Qur'ān had imposed the duty to obey the *ulu 'l-amr* (4: 59). This verse, which was commonly quoted as

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[6] *Ijmā'* is defined as the "unanimous agreement of the *mujtahidūn* of the Muslim community of any period following the demise of the Prophet Muḥammad on any matter". See for further discussion of the definition and essential requirements (*arkān*) of *ijmā'*, M. H. Kamali, *Principles of Islamic Jurisprudence* (Cambridge : The Islamic Texts Society, 1991), 169 ff.

[7] See for further detail M. H. Kamali, "Methodological Issues in Islamic Jurisprudence" in *Arab Law Quarterly*, Vol. 1 (1996), 3–34, at p. 8.

[8] Ṭāha Jābir al-'Alwānī, *Ijtihād* (Herndon, VA: The International Institute of Islamic Thought, 1993), 10.

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textual authority for *ijmā'*, naturally meant obedience not only to the *'ulamā'* but also to political leaders (i.e. the *umarā'*). Yet the *'ulamā'* began to ignore the government, presumably owing to problems of legitimacy, and judging by the definition of *ijmā'*, considered themselves entitled to obedience. Having said this, it is in order to recognise that the *'ulamā'* were not a monolithic category and that in every period there were some among them who complied with the wishes of political leaders. The definition of *ijmā'* does not, neverthelss, contain any reference to government authorities, and does not stipulate obedience to the government.

The *'ulamā'* might have been in a position then to isolate and ignore the government in their formulation of the legal theory of *uṣūl*, but that pattern of events would seem inconceivable today. It seems that we are now experiencing the opposite of what happened then: a near-total isolation of the *'ulamā'* and *mujtahidūn* from the process of statutory legislation. It is not surprising, under these circumstances, to see that the legal theory of *uṣūl al-fiqh* plays hardly any visible role in the legislative process of the modern nation state almost anywhere in the Muslim lands.

The theory of *ijmā'* also failed to integrate the Qur'ānic principle of consultation (*shūrā*).[9] For *ijmā'* was defined in such manner that it could be reached and verified, *ex post facto*, through the writings and *fatāwā* of the *'ulamā'* without the need for their collective deliberation over issues. The affairs of the community could thus be determined, as it seemed, without consultation either with the community or with the *mujtahidīn*.

What has just been said also touches on the practical difficulties of *ijmā'*, which are manifested in the absence of an institutional framework such as a representative body or council of *mujtahidūn*, and also the lack of a well-defined procedure for *ijmā'*. Muhammad Iqbal's observation, made in the 1930s, still stands when he said regarding *ijmā'* that "it is strange" that this important notion "rarely assumed the form of a permanent institution".[10] He then suggested that the power to conclude *ijtihād* and *ijmā'* should be transferred "from individual representatives of schools to a Muslim legislative assembly"[11] that comprises experts in the *Sharī'ah* and other disciplines,[12] adding that this was "the only possible form that *ijmā'* can take in modern times".[13]

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[9] 3: 159; 42: 38. For details on *shūrā*, see M. H. Kamali, *Freedom of Expression in Islam* (Cambridge: The Islamic Texts Society, 1997), 40–45.

[10] Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, reprint (Lahore: Sh. Muhammad Ashraf, 1982), 173.

[11] Ibid., 174.

[12] Ibid., 176.

[13] Ibid., 174.

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The practical aspect of the issue before us is also compounded by the fact that the statute book of the nation state of today has made the traditional role of the scholar and *mujtahid* in law-making almost totally redundant. There is no recognition of the role that *ijtihād* and *ijmā'* may play in the prevailing pattern of statutory legislation by national assemblies and parliaments.

Issues in *Ijtihād*

Even if one considers the so-called "closure of the gate of *ijtihād*" to be somewhat of an exaggeration, the fact remains that *ijtihād* has suffered a steady decline, which probably started not too long after the crystallization of the *madhāhib*. The *madhāhib* themselves were the products of a most productive age in the history of *ijtihād*. For a new *madhhab* and school can hardly develop without a wealth of original contribution by its advocates.[14] This was in the second and third centuries of *Hijrah*, but no new *madhhab* has emerged ever since and no one, it seems, actually offered a fresh interpretation of the *Sharī'ah*. Once established, however, the *madhāhib* themselves became prone to condoning conformity and imitation. A climate of opinion gained ground that everyone had to follow the existing interpretations of the *Sharī'ah*. The pressure of opinion was such that even prominent *mujtahids* that continued to emerge throughout the ages found it convenient to continue to wear the mantle of the prevailing *madhāhib*. *Ijtihād* may not have come to a total halt, yet it lost much of its originality and dynamism with which it was associated in earlier times.

With the "closure of the gate of *ijtihād*", which Iqbal has characterised to as "voluntary surrender of intellectual independence",[15] *uṣūl al fiqh* also lost its role and purpose in the development of juristic thought and began to be studied as a theoretical discipline for its own sake. This has had the effect, as Abū Zahrah noted, of moving the people further away from the sources of the *Sharī'ah*; some even went so far as to say that there was no further need to interpret the Qur'ān and *Ḥadīth* now that *ijtihād* had come to a close.[16]

Another weakness of the *uṣūlī* thought, from which it never really recovered, was its almost total neglect of the general goals and purposes of the *Sharī'ah*, that is, the *maqāṣid al-sharī'ah*. These should have been the principal theme and engagement of the legal theory from the outset, but as I shall presently explain, the *maqāṣid* remained very much on the fringes of *uṣūl al-*

[14] See for details M. H. Kamali, "Madhhab" in *The Encyclopedia of Religion* (New York: The Macmillan Publishing Co., 1987), 9: 66–70.

[15] Muhammad Iqbal, *Reconstruction of Religious Thought in Islam*, 178.

[16] Muḥammad Abū Zahrah, *Uṣūl al-Fiqh* (Cairo: Dār al-Fikr al-'Arabī, 1377/1958), 318.

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fiqh so much so that textbook writers on *uṣūl* tended to not even include it in their basic coverage of the subject.

Toward a *Maqāṣid*-Oriented Legal Theory

The goals and purposes of the *Sharī'ah* (*maqāṣid al-sharī'ah*), which remained for a long time as a neglected chapter of the *uṣūl al-fiqh*, has the potential to revitalise the *uṣūl* and the *Sharī'ah* and I propose to discuss this here in some detail.

A cursory perusal of the Qur'ān would be enough to show that the Qur'ān's primary concern is with values and objectives such as justice and benefit, mercy and compassion, uprightness and *taqwā*, promotion of good and prevention of evil, fostering goodwill and love among the members of the family, helping the poor and the needy, cooperation in good work, and so forth. The Qur'ān may thus be said to be goal-oriented, and that it seeks to foster a structure of values which has a direct bearing on human welfare. It is, for the most part, concerned with the broad principles and objectives of morality and law, rather than with specific details and technical formulas that occupy the bulk of the *uṣūl* works. Significantly, the Qur'ān characterises itself as "guidance and mercy — *hudan wa raḥmah*" (10: 57), and the prophethood of Muḥammad as "a mercy to the worlds" (21: 107). God Most High declared His own illustrious purpose in such terms: "We sent Our Messengers with evidences and revealed through them the Book and the Balance in order to establish justice among people" (57: 25). The Qur'ān is also expressive, at numerous places and in a variety of contexts, of the goals, purposes, rationale and benefits of its laws.

This idea of the identification of rationale and purpose, technically known as *ta'līl* (ratiocination), and the search for such in the context of *ijtihād*, is valid in *uṣūl al-fiqh* only with reference to worldly affairs (*mu'āmalāt*), but not with regard to devotional matters (*'ibādāt*). Yet this again is an *uṣūlī* conclusion. However, the Qur'ān does mention the rationale and purpose underlying the *'ibādāt*. Thus with reference to prayer, it is declared: "Truly *ṣalāh* restrains promiscuity and evil" (29: 45). After mentioning one of the levies — *fay'* — which is "for Allah, and His Messenger, and the kindred, the orphans, the poor, and the wayfarer", the Qur'ān points out that it is in order "that wealth may not circulate only among the rich" (59: 7). With reference to *jihād*, the text proclaims: "permission [to fight] was granted to those who were fought against for they were wronged" (22: 39). With reference to *qiṣāṣ*, it is declared: "And in *qiṣāṣ* (just retaliation) there is life for you, O people of understanding" (2: 179).

One can add many examples to demonstrate how the Qur'ān is expressive of the goals and purposes of its laws. Even in cases where the text does not

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identify its rationale and purpose, it is generally held that the underlying intention of the laws of *Sharī'ah* is realisation of benefit (*maṣlaḥah*) or prevention of prejudice and harm (*mafsadah*). Mercy (*raḥmah*) in the Qur'ānic phrase is, to all intents and purposes, used synonymously with *maṣlaḥah* and benefit to mankind, which is the overriding objective of all of the laws of the *Sharī'ah*. Justice (*'adl*) regarding which the Qur'ān is clearly emphatic also partakes of *maṣlaḥah*.

Since the legal theory of *uṣūl* is meant to translate the value structure of the revelation (*waḥy*) into operative formulas and ensure that *ra'y* and *ijtihād* are the carriers of these values, it would follow that the objectives and values, rather than technicality and literalism, should have been the overriding theme and preoccupation of *uṣūl al-fiqh*. But the legal theory of *uṣūl* actually traversed a different course, and it was not until Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī (d. 790/1388) and his predecessors, 'Izz al-Din ibn 'Abd al-Salām (d. 660/1262) and Abū Ḥāmid al-Ghazālī (d. 505/1111) that *maqāṣid* were added as a new chapter to the legal theory of *uṣūl*. Yet even these developments proved to have had a limited impact. A certain degree of attention that was paid to the *maqāṣid* seems to have come somewhat late, that is, at a time when the climate of imitation and *taqlīd* was too entrenched for this fresh development to bring about any significant change in the generally accepted formulations of *uṣūl al-fiqh* from their conventional mould.

The basic notion of the *maqāṣid al-Sharī'ah* was never denied by the leading *madhāhib*, but they differed in the degree of prominence that should be attached to it. Except for the Ẓāhirī school, which took a totally literalist view of the *maqāṣid* by saying that the *maqāṣid* can only be known when they are identified by the clear text, the majority of jurists did not confine the *maqāṣid* to the clear text alone. They perceived and understood the *Sharī'ah* to be rational, goal-oriented and comprehensive. A dry and mechanical conformity to rules (*aḥkām*) that went against the purpose and intention thereof was consequently held to be unacceptable. Thus when a person uttered the testimonial of the faith, or offered prayers for that matter, in order to gain recognition and worldly benifit, his performance was considered to be substantively invalid. But even so, detailed elaboration on the objectives of the *Sharī'ah* was generally not encouraged. Textbook writers on the *uṣūl* continued to treat knowledge of the *maqāṣid* as a supplementary qualification for the *mujtahid*, and tended to subsume the *maqāṣid* under such themes as *ta'līl* and the effective cause (*'illah*) or rationale of the *aḥkām*. References were also made to *maqāṣid* in chapters on public interest (*maṣlaḥah*), juristic

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preference (*istiḥsān*), blocking the means [to all that is reprehensible] (*sadd al-dharā'i'*), and custom (*'urf*).[17]

The reticence of the *ulamā'* to give prominence to the *maqāṣid* was partly due to the speculative element that was involved in the identification of the *maqāṣid*. To say, for example, that this or that was the *maqṣūd* and purpose of the Lawgiver naturally involved an element of prognostication that evoked a hesitant response from the *'ulamā'* unless, of course, the text clearly declared such. But the contribution of the *'ulamā'* to this theme continued nevertheless. Imām al-Ḥaramayn al-Juwaynī (d. 478/1085) and then his disciple, Abū Ḥamīd al-Ghazālī, classified the *maqāṣid* into the three main categories of *ḍarūriyyah* (essential), the *ḥājjiyyah* (complementary) and the *taḥsīniyyah* (desirable) objectives and interests of the *Sharī'ah*. Al-Ghazālī spoke at length about considerations of public interest (*maṣlaḥah*) and *ta'līl* (ratiocination) and was generally critical of unrestricted *maṣlaḥah* (*maṣlaḥah mursalah*) but validated it where it truly promoted the *maqāṣid* of the *Sharī'ah*.[18] As for the *maqāṣid* themselves, al-Ghazālī wrote, probably for the first time, that the *Sharī'ah* pursued and promoted five essential values: faith, life, intellect, property and lineage, and that these were to be protected as absolute priorities.[19] This was a different engagement, one might say, to the erudite but technical elaborations of *ijmā'* and *qiyās* which filled the pages of the *uṣūl* texts. The *maqāṣid* discourse was not so much concerned with abstract juristic formulas but with values and realities of concern to the individual and the society. This shift of focus was naturally more meaningful to *fiqh* which was concerned with practical legal rulings (*aḥkām shar'iyyah 'amaliyyah*) that promoted the people's interests.

A number of prominent scholars contributed to the theory of *maqāṣid*. Shihāb al-Dīn al-Qarāfī (d. 689/1290) added a sixth to the existing list of five essential *maqāṣid*, namely *al-'irḍ*, that is, protection of honour. The existing list of the five values was, in turn, predicated on a reading of the *ḥudūd* (prescribed penalties). The value that each of these penalties sought to protect was apparently identified as a *maqṣad* or objective of the *Sharī'ah*. The latest addition of *al-'irḍ* was initially thought to have been covered under lineage (*al-nasl*), but since there was a separate *ḥadd* for slander (*qadhf*), the new addition was justified. 'Izz al-Dīn ibn 'Abd al-Salām opened the scope of the *maqāṣid* in his important work, *Qawā'id al-Aḥkām fi Maṣāliḥ al-Anām* where he wrote that "the greatest of all the objectives of the Qur'ān is to facilitate benefits

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[17] Cf. Muḥammad al-Dusūqī, "Naḥw Manhaj Jadīd li Dirāsat 'Ilm Uṣūl al-Fiqh" in *Islāmiyyat al-Ma'rifah*, vol. 1, no. 3 (1416/1996), 132.

[18] Abū Ḥamid Muḥammad al-Ghazālī, *al-Musṭasfā min 'Ilm al-Uṣūl* (Cairo: al-Maktabah al-Tijāriyyah, 1356/1937), 1: 287.

[19] Ibid.

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(*maṣāliḥ*) and the means that secure them". [20] Taqī al-Dīn Ibn Taymiyyah (d. 728/1328) was probably the first to depart from the notion of confining the *maqāṣid* to a specific number or type. He added that the *Sharī'ah* promoted such other values as fulfilment of contracts, preservation of the ties of kinship, good relations with one's neighbours, moral purity, trustworthiness and the love of God on which the Qur'ān and *Sunnah* were equally explicit. These he maintained should be added to the list of the *maqāṣid*. [21] Ibn Taymiyyah thus revised the scope of the *maqāṣid* from a designated list into an open chapter and range of values. We may now add to this perhaps values that have gained more prominence in our time such as protection of fundamental rights and liberties and promotion of public welfare and scientific research. These are important not only for raising the living standards of people but also for enhancing the standing of the *ummah* in the world community.

Identification of *Maqāṣid*

The *'ulamā'* have differed in their approach to the identification of *maqāṣid* and the values that they seek to defend. At issue basically was the question whether the *maqāṣid* were to be confined to what was identified by the clear text. The Ẓāhirī school insisted on this and maintained that the clear *nuṣūṣ*, especially those containing commands and prohibitions, were the carriers of the *maqāṣid*. The *maqāṣid*, according to this view, have no separate existence and were to be found in the explicit and normative as opposed to implicit and subsidiary, injunctions of the Qur'ān and the *Sunnah*. This approach was, once again, inclined toward literalism and turned a blind eye to the rationale and effective cause of the text and its underlying intention. The majority of the *'ulamā'*, on the other hand, in the determination of the *maqāṣid*, looked into both the text and its rationale, *'illah* and *ḥikmah*. Yet as already noted, their view of *'illah* and rationale was somewhat restrictive and so was their view of the *maqāṣid*.

Then came Abū Isḥāq Ibrāhīm al-Shāṭibī, the chief exponent of the *maqāṣid*, who took a comprehensive view of this subject by adding the inductive method (*al-istiqrā'*) to the existing approaches. To identify the *maqāṣid*, Shāṭibī spoke affirmatively of the need to observe the explicit injunctions, but added that adherence to the text must not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. The preferred approach was naturally the integrated approach of reading the

[20] 'Izz al-Dīn ibn 'Abd al-Salām, *Qawā'id al-Aḥkām fi Maṣāliḥ al-Anām*, ed., Ṭāhā 'Abd al-Ra'ūf Sa'd (Cairo: al-Maṭba'ah al-Ḥusayniyyah, 1351 AH), 1: 8.

[21] Taqī al-Dīn Ibn Taymiyyah, *Majmū'at al-Fatāwā Shaykh al-Islām Ibn Taymiyyah* (Beirut: Mu'assasat, al-Risālah, 1398 AH), 32: 134.

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text in conjunction with its rationale, objective and purpose.[22] The following examples highlight the *maqāṣid*-oriented approach to *ijtihād*:

(a) According to the majority, the *ṣadaqat al-fiṭr* (charity given at the end of Ramaḍān) must be given in kind, since all the *aḥādīth* on this subject mention dates, wheat, barley and raisin. Only some Ḥanafī scholars held that it may be given in their monetary equivalent. For, after all, the purpose of that charity was to satisfy the need of the poor, which can also be met by giving it in cash. The first position is clearly literalist, whereas the second is purpose-oriented. The ruling of the *ḥadīth* was suitable for its own time when there were shortages of staple food in the market of Madīnah, but that situation subsequently changed. Then again, the Prophet (peace be on him) authorised collection and distribution of the *fiṭr* charity between the *Fajr* and *'Īd* prayers on the first day of *'Īd al-Fiṭr*. This was possible at the time as the community was relatively small, but it became difficult to follow the original ruling later when Madīnah expanded. Subsequent *ijtihād* actually changed that position and ruled that *fiṭr* charity may be given one or two days before the *'Īd*, or even any time during the fasting month.

(b) The beginning of the fasting month is signified, as the Qur'ān provides (2: 185), by the sighting of the new moon. This was the only reliable method in earlier times, especially in the Arabian peninsula where clear skies were normally expected, but to insist on sighting of the new moon with the naked eye may not be necessary under the changed circumstances of today. For that would mean insisting on a literal enforcement of the text while turning a blind eye to new scientific methods. To insist on a literal reading of the text would not only lead to uncertainty, in some cases at least, but also to defy the essence of the Qur'ānic directives on rational observation and empirical truth. Besides, we can adopt several other positions rather than insist on sighting of the moon provided there is no change in the goal and purpose, which is to determine the arrival of Ramaḍān. There is change only in the means toward reaching it. When better means becomes available that serve the same purpose, they should certainly be considered in a positive spirit.

(c) There are several *aḥādīth* wherein the Prophet (peace be on him) emphasised the use of *siwāk*, that is the toothbrush. Since *siwāk* referred, at that time, to a particular type of brush that was commonly used for the purpose, pious Muslims continued to use the *siwāk* even after more effective varieties of brushes became available. A literalist reading of the *ḥadīth* would hardly seem advisable at a time when the purpose of the directive, which is cleanliness, could be achieved more effectively by other means. The *fuqahā'* have, in fact, subsequently tended to upheld this latter position.

(d) At a time when food prices went up sharply in Madīnah, some Companions suggested that the Prophet (peace be on him) should fix the prices of basic

[22] Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt fi Uṣūl al-Aḥkām*, ed., Shaykh 'Abd Allāh Darāz (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), 2: 393.

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commodities. The Prophet (peace be on him) declined and in a long *ḥadīth*, reported by Anas b. Mālik, he explained his apprehension that such a ruling may prove to be unfair to some people. Price control was thus rejected and the fear was that it may worsen the supply situation in the Madīnan market, which was known to be irregular. Later during the period of Tābi'ūn (Successors), the issue of price control (*tas'īr*) became the focus of attention and the leading *'ulamā'* of Madīnah validated *tas'īr* and reasoned that the Prophet (peace be on him) had declined *tas'īr* for fear of perpetrating injustice, but that drastic change of circumstances had created a situation wherein people might suffer if the government did not intervene to regulate the prices. Although the ruling in this instance was the opposite of what was upheld in the *ḥadīth*, the purpose of both rulings was the same, which was to avert oppression and abuse. [23]

Shāṭibī's major work, *al-Muwāfaqāt*, is well-known for its fresh emphasis on the philosophy of law (*ḥikmat al-tashrī'*) and the *maqāṣid al-Sharī'ah*. The author was critical of the *uṣūli* approach to the exposition of the sources and proofs of *Sharī'ah* and their neglect of the *maqāṣid*. Shāṭibī departed from that approach by placing a fresh emphasis on the *maqāṣid* and widening their scope through his inductive method. What this meant was that the *maqāṣid* could be identified through the general reading of the *nuṣūṣ* even in the absence of a specific text. There may be various textual references to a subject, none of which are in the nature of a decisive injunction, yet their collective reading leaves little doubt as to their meaning and purpose. A decisive conclusion may thus be obtained from a plurality of inclining expressions. Shāṭibī illustrated this by saying that nowhere in the Qur'ān is there a specific declaration to the effect that the *Sharī'ah* is enacted for the benefit of the people, yet this is a definitive conclusion that is sustained by the collective reading of a variety of textual proclamations. [24] On a similar note, there is no specific text to declare protection of the five values (of faith, life, intellect, property and lineage) as of primary importance to the *Sharī'ah*, yet this very conclusion has been arrived at by induction (*istiqrā'*) and has been generally accepted. Shāṭibī then added that the inductive method also applied to the identification of commands and prohibitions, and it was not, therefore, confined to the *maqāṣid* and *maṣāliḥ* as such. [25] He maintained that conclusions that are arrived at through induction

[23] See for details, M. H. Kamali, "*Tas'īr* or Price Control in Islamic Law" in *The American Journal of Islamic Social Sciences*, vol. 2 (1994), 25–38. See also Yūsuf al-Qaraḍāwī, *Kayfa Nata'āmalu ma' al-Sunnah al-Nabawiyyah*, 2nd edn. (Herndon, VA: al-Ma'had al-'Ālamī li al-Fikr al-Islāmī, 1411/1990), 134–141; idem, *al-Ijtihād fi'l-Sharī'ah al-Islāmiyyah* (Kuwait: Dār al-Qalam, 1406/1985), 120–22

[24] Shāṭibī, *Muwāfaqāt*, 2: 6.

[25] Ibid., 3: 148.

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represented the general premises and objectives of the *Sharī'ah* over and above the level of the specific rules.

Without wishing to go into details, Shāṭibī's theory of the *maqāṣid* also took into consideration the consequences of acts (*ma'ālāt al-af'āl*) and he gave many examples of this from the *Sunnah* to the effect that the rules of the *Sharī'ah* were sometimes formulated in consideration of their expected consequences. The theory of *maqāṣid* also engages the reader into the question of means and ends and whether the means to *wājib*, or the means to *ḥarām*, should also be seen as an integral part of the *wājib* or the *ḥarām* in question. Then he discussed the subject of *'illah* (effective cause) in the context of the *maqāṣid* and advanced a fresh understanding of it which was more conducive to his theme.

Shāṭibī also emphasised the importance of the *maqāṣid* for *ijtihād*. A sound knowledge of the goals and objectives of the *Sharī'ah* was a prerequisite for attainment to the rank of *mujtahid*. He stressed on the point that neglecting the *maqāṣid* made *ijtihād* liable to error. Those who looked at the apparent text of the Qur'ān without pondering over its ultimate aim, such as the advocates of pernicious innovations (*ahl al-bida'*), Mu'tazilah and Khārijites, did so at their own peril. Many of them held on to the literal text or even the *mutashābihāt* (the intricate segments of the Qur'ān) and premised their erroneous conclusions on them. They took a fragmented approach to the understanding of the Qur'ān which was flawed by their neglect of the *maqāṣid*. [26]

A twentieth century scholar and author of another important work on the *maqāṣid*, Muḥammad Ṭāhir ibn 'Āshūr, also stressed that knowledge of the *maqāṣid* was indispensable for *ijtihād* in all its manifestations. Ibn 'Āshūr gave many examples of the *ijtihād* of some very prominent *'ulamā'* of *fiqh* and pointed at their weaknesses on the grounds specifically of their literalist orientation to *ijtihād* and particularly their neglect of the *maqāṣid*. Considerations of brevity, however, does not permit further elaboration of this point. [27]

In a real sense, almost the whole of our discussion of the *maqāṣid* is focused on *ijtihād*. The *maqāṣid* only serve the purpose of opening up the avenues of *ijtihād* and enhance the ideational substance and foundation of *ijtihād*, but the *maqāṣid* do not propose a procedure or methodology of their own. Having added the benefit of the *maqāṣid* to our approaches to *ijtihād*, we still need a methodology and framework for legislation. The *uṣūl al-fiqh* is

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[26] Ibid., 4: 179.

[27] Muḥammad Ṭāhir ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Tunis: Maṭba'at al-Istiqāmah, 1966), 15–16. For a discussion of some such examples, see M. H. Kamali, *Principles of Islamic Jurisprudence*, 405–406

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basically rich in methodology which is, however, not functioning, and it would not serve a good purpose simply to propose a merger between *ijtihād*, the *maqāṣid*, and *ijmā'*. For this would once again subject the new project to the difficult requirements of *ijmā'*. What we need, therefore, is a modified procedure for *ijmā'* which is then utilised as a legislative vehicle for the *maqāṣid*-oriented *ijtihād*.

A reformulated *ijmā'* can provide the needed vehicle and procedure for our proposals. *Ijmā'* can, in the meantime, play a positive role in the democratisation, as it were, of the legal theory and, indeed, of the entire political system. Such an *ijmā'* should no longer be confined to the consensus of the learned elite and should be opened up so as to represent the general consensus of the community, which is also enlightened and supported by its learned members.[28] To reform *ijmā'* in this way would actually bring it close to its understanding by Shāfi'ī. For Shāfi'ī *ijmā'* had meant the consensus of both the laymen and the *mujtahidūn* of the Muslim community. The only departure that is hereby proposed is regarding the requirement of universal consensus. Even Shāfi'ī recognised that this was difficult to obtain and could only be realised with regard to the obligatory duties only and not on issues that were open to *ijtihād*.[29]

A body of reformist opinion on *ijmā'* has developed in recent times and various proposals have been put forward by Muhammad Iqbal, 'Abd al-Wahhāb Khallāf, Maḥmūd Shaltūt, to mention just a few, all of which seek to overcome the problematics of this doctrine. Khallāf proposed that since modern governments are now playing a leading role in education and legal services, they should also play a proactive role in *ijmā'* and *ijtihād*. Khallāf proposed that a procedure of accreditation for qualified *mujtahids* should be devised and also that the agreement of the majority, as opposed to universal consensus, should be sufficient for *ijmā'*.[30] Muhammad Iqbal proposed that *ijmā'* and *ijtihād* should be institutionalised within the rubric of the Muslim legislative assembly, which combined both experts in the *Sharī'ah* and other disciplines. Shaltūt warned against the prospects of politicisation of *ijmā'* and recommended that freedom of expression must be guaranteed for the constituents of *ijmā'*.[31] In an article that I published in 1996, I submitted that the conventional "definition of *ijmā'* is oblivious of both the Qur'ānic concepts of *shūrā* and *ulu 'l-amr* especially with reference to the government

[28] Cf. Abdelwahab El-Affendi, *Turabi's Revolution: Islam and Power in the Sudan* (London: Grey Seal, 1991), 160.

[29] Muḥammad ibn Idris al-Shāfi'ī, *al-Risālah*, 205, n. 1.

[30] 'Abd al-Wahhāb Khallāf, *'Ilm Uṣūl al-Fiqh*, 12th edn. (Kuwait: Dār al-Qalam, 1398/1978), 49-50.

[31] Maḥmūd Shaltūt, *al-Islām: 'Aqīdah wa Sharī'ah*, 58.

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and the role it might reasonably be expected to play in consultation and in taking charge of the community affairs".[32] I also proposed that *ijtihād* and *ijmā'* should be merged into a unified formula to be known as "ordinances (or *aḥkām*) of the *ulu 'l-amr*", a designation which is clearly reflective of the Qur'ānic origin of the proposed formula. What is now being proposed is that in the formulation of such ordinances, the *ulu 'l-amr* should be guided both by specific injunctions as well as the general objectives, philosophy and spirit of the *Sharī'ah*.

Conclusion

At a time when the major issue facing the *ummah* is over the prospects of the *Sharī'ah* being marginalised altogether, a total preoccupation with the specifics would hardly seem advisable. The methodology of *uṣūl al-fiqh* was formulated at a time when the fate of the *Sharī'ah* was basically not at issue, nor did the legal theory of *uṣūl* concern itself with that question. The near-total reliance that we now witness on the statute book and the role of parliamentary legislation has nowhere been envisaged in conventional *uṣūl al-fiqh*, and it does not have the capacity to accommodate this new reality without necessary adjustment. The rich legacy of the *uṣūl* methodology can be utilised in a new framework that opens avenues for *ijtihād* and can integrate and unify the *Sharī'ah* and statutory legislation within one and the same process. The new *maqāṣid*-oriented approach to *ijtihād* that is proposed here seeks to open up the scope of *ijtihād* by making the *maqāṣid* an extension of the theory of *ijtihād*. Since the *maqāṣid* is concerned basically with values and is relatively unencumbered by technicalities, it can help to make the legal theory pragmatic and relevant to the concerns of modern society.

Thus, we propose to retain the basic tools and methods of *uṣūl al-fiqh*, especially with reference to *ijtihād* and *ijmā'*, and nearly all of the sub-varieties of *ijtihād*, but propose in the meantime to discard formalism and unwarranted preoccupation with the technicalities of the conventional legal theory. To consolidate *ijtihād*, *maqāṣid al-sharī'ah* and *ijmā'* within the unified concept of "ordinances of the *ulu 'l-amr*" would serve the important purpose of discarding the persistent bifurcation and dualism that has prevailed during the greater part of our history, which has, however, been viewed as an anomaly that did not merit acceptance. Since my present proposal is predicated on the Qur'ānic guidelines pertaining to *ulu 'l-amr* and *shūrā*, its Islamic credentials are sound and what it actually proposes is also eminently in line with the spirit of unity and integration in the community. The ordinances of *ulu 'l-amr* is a

[32] M. H. Kamali, "Methodological Issues in Islamic Jurisprudence", 29, n. 7.

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comprehensive concept which is premised on collaborative effort of all sectors of the community; it seeks to unify the task of legislation on all matters and overrule, therefore, the division between the *Sharī'ah* and statutory law.

My proposed reform is also guided by the principle of *tawḥīd*, the belief in the Oneness of the Creator and the demand of unity that it generates. The legal theory of Islam must surely be grounded in *tawḥīd* and the social fabric of the *ummah*, its government and its laws must reflect the unity that is inherent in *tawḥīd*. Bifurcation and duality in the government and laws of the Muslim community must therefore be avoided and minimised. Needless to say that the vision of *tawḥīd* that is expressed here is concerned with the overriding goal and outlook of integration. There is no suggestion in all of this to overrule the diversity that exists in the rich legacy of *fiqh* and the legal schools it has generated.

The unified concept of the *aḥkām ulu 'l-amr* which I have proposed is premised in the unitarian calling of *tawḥīd* and seeks to comprise and subsume, in addition to *ijmā'* and *ijtihād*, almost all of the sub-varietes of *ijtihād*, including analogy (*qiyās*), juristic preference (*istiḥsān*), consideration of public interest (*istiṣlāḥ*), blocking the means [to all that is reprehensible] (*sadd al-dharā'i'*), the *fatwā* of the Companion (*fatwā al-ṣaḥābī*), as well the goals and purposes, or *maqāṣid*, of the *Sharī'ah*. All of these are visualised as sources and formulas that may be utilised as basic data, or selected directly for enforcement, through the modality of *aḥkām ulu 'l-amr*. The procedure that is envisaged would be the reformulated procedure of *ijmā'* which is employed in order to give finality and binding force to the rules and principles that are drawn from these various sources.

We may reiterate here that the rulings and ordinances of the *ulu 'l-amr* are not envisaged merely as a procedural device but also as a substantive source and proof of the *Shari'ah* next to the Qur'ān and the *Sunnah*. Substantially, the *aḥkām ulu 'l-amr* consolidate the various doctrines of *ijtihād* into a single workable concept. The *ijmā'*-based procedure that is proposed in the *aḥkām ulu 'l-amr* can also be used with reference to the textual rulings, or *nuṣūṣ* of the Qur'ān and the *Sunnah*: As a substantive principle of legislation the authority of *aḥkām ulu 'l-amr* is below the *nuṣūṣ*, but may act with reference to the *nuṣūṣ* in the same capacity as *ijmā'*. The *aḥkām ulu 'l-amr* can thus elevate a speculative (*ẓannī*) provision of the Qur'ān and the *Sunnah* into a decisive (*qaṭ'ī*) provision and declare it as such for enforcement purposes.

Only two doctrines of *uṣūl al-fiqh* tend to remain outside my proposed scheme. These are presumption of continuity (*istiṣḥāb*) and custom (*'urf*). Since both of these are predicated on the continuity of *status quo ante*, they may not necessarily require formal ratification through the same procedure that is proposed for the *aḥkām ulu'l-amr*, and may be enforced directly by the judges.

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But even so, *istiṣḥāb* and *'urf* can be utilised as the raw materials of *ijtihād*, and if so desired, the rulings of *'urf* and *istiṣḥāb* may also be adopted into the *aḥkām ulu 'l-amr*.

And finally, the reformulated legal theory that is proposed here would need to be articulated in the applied constitution of the land, which will itself be seen as an overriding and integral part of the rulings of the *aḥkām ulu 'l-amr*. The constitution should identify the place and role of all of the various formulas and doctrines that are discussed here for purposes of legislation. The proposed constitutional rulings should be specific enough, perhaps, to prevent confusion and overlap between the new scheme and the conventional methodology and doctrines of *uṣūl al-fiqh*.

What I have proposed here may in some ways sound a little remote especially in view of the prevailing duality in many Muslim countries between *Sharī'ah* and statutory law and between *'ulamā'* and government. But there is room for optimism, and ideals may become reality when such ideals present sufficient potential for sustained research on a wider scale that may aspire to higher levels of refinement and hopefully usher in a new era for *ijtihād*.

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